

CV 12 - 4411

James S. Yu, Esq. (JY-9734)
SEYFARTH SHAW LLP
620 Eighth Avenue
New York, New York 10018-1405
(212) 218-5500

FILED
ORIGINAL
2012 SEP -4 PM 4:20
U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

Attorneys for Defendant Comenity LLC

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IRIZARRY, J.

YASHMINE J. DANIEL,

Plaintiff,

LEVY, M.J.

vs.

COMENITY LLC, C T CORPORATION
SYSTEM,

Defendants.

ECF CASE

Civil Action No. _____

NOTICE OF REMOVAL

Defendant Comenity LLC ("Comenity") by its attorneys, Seyfarth Shaw LLP, and pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, files this Notice of Removal with respect to the case identified as *Yashmine J. Daniel v. Comenity LLC, et al.*, Index No. CV-027895-12/QU, from the Civil Court of the City of New York, County of Queens. In support of this Notice, Comenity states as follows:

The Summons and Complaint

1. On or about July 27, 2012, plaintiff Yashmine J. Daniel ("Plaintiff") commenced a civil action by filing a Summons With Endorsed Complaint (the "Summons and Complaint") in the Civil Court of the City of New York, County of Queens, naming Comenity as a defendant.

2. On August 6, 2012, Comenity's registered agent received a copy of the Summons and Complaint by Federal Express sent directly by Plaintiff. The Summons and Complaint was, therefore, not properly served in accordance with New York's Civil Practice Law and Rules ("CPLR"). Plaintiff's Affidavit of Service is also deficient and was executed by Plaintiff in contravention of CPLR § 2103(a), which provides, "Except where otherwise prescribed by law or order of court, papers may be served by any person not a party of the age of eighteen years or over."

4. A true and correct copy of the Summons and Complaint is annexed hereto as Exhibit A; pursuant to 28 U.S.C. § 1447(b) and Rule 81(a) of the Local Rules of Civil Procedure, the Summons and Complaint and Affidavit of Service constitute "all records and proceedings" in the state court.

Timeliness of Removal

5. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b), having been filed within thirty (30) days after Comenity's initial receipt of the Summons and Complaint, which is the "pleading from which it may first be ascertained that the case is one which is . . . removable." 28 U.S.C. § 1446(b).

Basis for Removal

6. Pursuant to 28 U.S.C. § 1331, original jurisdiction exists in this Court. According to the Summons and Complaint, the nature and the substance of the plaintiff's cause of action states, verbatim, as follows: "Fair Credit Reporting Act and Fair Credit Billing Act Violations for \$20,000.00 with interest from 01/12/1991." The Fair Credit Reporting Act is codified at 15 U.S.C. § 1681, *et seq.* The Fair Credit Billing Act is codified at 15 U.S.C. § 1601, *et seq.*

7. Accordingly, this case is a civil action founded on a claim or right arising under the laws of the United States over which this Court has original jurisdiction, and is therefore one which may be removed from the Civil Court of the City of New York, pursuant to 28 U.S.C. § 1441(b).

8. No other process, pleadings or orders have been served upon Comenity. *See* 28 U.S.C. § 1446(a). As required by § 1446(b), certified or attested copies of all records, proceedings, and docket entries in state court will be filed with this Court within thirty (30) days of this Notice of Removal.

9. Pursuant to § 1446(d), Comenity shall promptly give written notice hereof to all adverse parties and file a copy of this Notice of Removal with the Civil Court of the City of New York, County of Queens, located 89-17 Sutphin Boulevard, Jamaica, New York 11435, notifying that court of this removal. A copy of the state court notice to be filed (without exhibits) is attached hereto as Exhibit B.

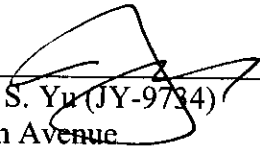
All Defendants Consent to Removal

Defendant C T Corporation System consents to removal of this action to the U.S. District Court for the Eastern District of New York. Defendant C T Corporation has further advised Plaintiff that it was named in error and is therefore not a proper party to this case. Attached hereto as Exhibit C is a copy of C T Corporation System's written authorization to removal, and its letter to Plaintiff, dated August 31, 2012, requesting dismissal from this action.

WHEREFORE, Defendant Comenity hereby effects the removal of the cause and requests that this Court maintain jurisdiction over it provided by law.

Dated: New York, New York
September 4, 2012

SEYFARTH SHAW LLP

By 
James S. Yu (JY-9734)
620 Eighth Avenue
New York, New York 10018-1405
(212) 218-5500
Attorneys for Defendant Comenity LLC

To: Yashmine J. Daniel
104-23 198th Street
Saint Albans, New York 11412
Pro Se

Civil Court of the City of New York
County of Queens

Index Number: **CV-027895-12/QU**

YASHMINE J DANIEL

Plaintiff(s)

-against-

COMENITY LLC, C T CORPORATION SYSTEM

Defendant(s)

**SUMMONS WITH ENDORSED
COMPLAINT**

BASIS OF VENUE: Plaintiff's residence

Plaintiff's Address (s) :
YASHMINE J DANIEL
104-23 198TH STREET
Saint Albans, NY 11412-

To the named defendant (s)

COMENITY LLC, C T CORPORATION SYSTEM (Def), at 1300 EAST NINTH STREET, Cleveland, OH
44114-

YOU ARE HEREBY SUMMONED to appear in the Civil Court of the City of New York, County of Queens at the office of the Clerk of the said Court at **89-17 Sutphin Boulevard** in the **County of Queens, City and State of New York**, within the time provided by law as noted below and to file your answer to the (endorsed summons) (annexed complaint) * with the Clerk; upon your failure to answer, judgment will be taken against you for the total sum of \$20,000.00 and interest as detailed below. Plaintiff's work sheet may be attached for additional information if deemed necessary by the clerk.

Date: July 27, 2012

Carol Alt
Chief Clerk

ENDORSED COMPLAINT

The nature and the substance of the plaintiff's cause of action is as follows:

Fair Credit Reporting Act and Fair Credit Billing Act Violations for \$20,000.00 with interest from 01/12/1991

****NOTE TO THE DEFENDANT***

A) If the summons is served by its delivery to you personally within the City of New York, you must appear and answer within TWENTY days after such service; or

B) If the summons is served by delivery to any person other than you personally, or is served outside the City of New York, or by publication, or by any means other than personal delivery to you within the City of New York, you are allowed THIRTY days after the proof of service thereof is filed with the Clerk of this Court within which to appear and answer.

C) Following CPLR 321(a) corporations must be represented by an attorney.

**** NOTE TO THE SERVER OF THE SUMMONS***

The person who serves the summons should complete the Affidavit of Service and shall file it in the Clerk's Office in the county where the action is brought.

PLAINTIFF'S CERTIFICATION
(See 22NYCRR, Section 130-1.1a)

SIGN NAME:
PRINT NAME:


YASHMINE J DANIEL

Civil Court of the City of New York
County of Queens

Index no: CV-027895-12/QU

YASHMINE J DANIEL

Plaintiff(s)

-against-

COMENITY LLC, C T CORPORATION SYSTEM

Defendant(s)

Affidavit of Service of Summons
with Endorsed Complaint
(Personal and Corporate)

State of New York, County of _____ ss:

_____, being duly sworn, deposes and says:
(Name of Server)

I am over 18 years of age and not a party to this action.

At _____, AM/PM, on _____ at _____
(Time) (Date) (Address)

in the County of _____, City/State of New York, I served the attached
(Name of County)

SUMMONS WITH ENDORSED COMPLAINT in this matter on _____
(Name of Defendant as Shown Above)

by delivering the said SUMMONS to:

_____ who is:
(Name of actual person with whom the SUMMONS was left)

☐ The said defendant in person,

or,

☐ known to me to be the _____ of the _____
(Title) (Corporation/Partnership)

Description of Individual Served in Person:

Sex: _____ Color of Skin: _____ Color of Hair: _____
Approximate Age: _____ Approximate Weight: _____ Approximate Height: _____

Sworn to before me this 1 day of 8, 2012

Yashmine J Daniel
(Signature of Deponent)

[Signature]
(Notary Public)

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS

-----X
YASHMINE J. DANIEL,

Plaintiff,

vs.

COMENITY LLC, C T CORPORATION
SYSTEM,

Defendants.
-----X

Index No. CV-027895-12/QU

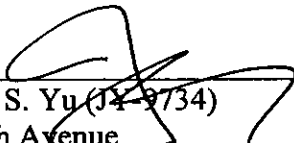
**NOTICE OF FILING OF
REMOVAL**

PLEASE TAKE NOTICE that this case, which was previously pending in the Civil Court of the City of New York, County of Queens, has been removed to the United States District Court for the Eastern District of New York by defendant, Comenity LLC, pursuant to Title 28 U.S.C. § 1331, 1441, and 1446. A copy of the Notice of Removal, filed with the United States District Court for the Eastern District of New York is attached hereto as Exhibit A.

PLEASE TAKE FURTHER NOTICE that, pursuant to 28 U.S.C. § 1446(d), this Court "shall proceed no further unless and until the case is remanded."

Dated: New York, New York
September 4, 2012

SEYFARTH SHAW LLP

By 
James S. Yu (JD-9734)
620 Eighth Avenue
New York, New York 10018-1405
(212) 218-5500
Attorneys for Defendant Comenity LLC

YASHMINE J. DANIEL,

Plaintiffs,

v.

COMENITY LLC, C T CORPORATION SYSTEM,

Defendants.

NOTICE OF FILING OF REMOVAL

SEYFARTH SHAW LLP
Attorneys for Defendant Comenity LLC
 620 Eighth Avenue
 New York, New York 10018
 (212) 218-5500

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

☐
 NOTICE OF
 ENTRY

that the within is a (certified) true copy of a
 entered in the office of the clerk of the within named Court on 2012.

☐
 NOTICE OF
 SETTLEMENT

that an Order of which the within is a true copy will be presented for settlement to the Hon.
 One of the judges of the within named Court,
 at 2012, at M. on

Dated:

SEYFARTH SHAW LLP
Attorneys for Defendant Comenity LLC
 620 Eighth Avenue
 New York, New York 10018
 (212) 218-5500

To:
 Attorney(s) for

Yu, James

From: Uva, Kenneth [kenneth.uva@wolterskluwer.com]
Sent: Friday, August 31, 2012 12:08 PM
To: Yu, James
Subject: Daniel v. Comenti and C T Corporation System
Attachments: Scan Documents-109.pdf

Dear Mr. Yu:

Per your call to CT's office in Cleveland, you are hereby authorized to file a change of venue in the above-referenced matter. CT has been named a defendant in error and has no interest in the litigation.

The attached letter is being sent today for delivery to the plaintiff tomorrow.

Kenneth Uva
Representation Services Advisor
C T Corporation System
212 894 8679

9/4/2012



CT

a Wolters Kluwer business

CT
111 Eighth Avenue
New York, NY 10011

212 894 8679 tel
212 590 9180 fax
www.ctlegalsolutions.com

August 31, 2012

Yashmine Daniel
104-23 198th Street
Saint Albans, NY 11412

Via Federal Express/Overnight

Re: Daniel v. Comenity LLC and C T Corporation System
No. CV02789512QU; Civil Court, County of Queens

Dear Ms. Daniel:

C T Corporation System ("CT") at its offices in Cleveland, received a Summons and Complaint wherein CT was named as a defendant.

Please be advised that CT was named a defendant in error and must be dismissed immediately. CT has no connection with the subject matter of this action other than acting as registered agent for service of process for the intended party.

We expect that you will immediately dismiss CT from this action and send proof of the dismissal to my attention. In addition, as a courtesy, we expect that you will let us know your intentions by checking one of the following and faxing it to me at (212) 590-9180.

☐ C T Corporation System will be dismissed from this action.

☐ C T Corporation System will not be dismissed from this action.

Should CT or any of its employees be in any way damaged by your erroneous pleadings, including a listing on any litigation report or database, we will look to you for all appropriate remedies.

Thank you for your prompt attention to this matter.

Very truly yours,

Kenneth J. Uva
Vice President

Kenneth.uva@wolterskluwer.com

cc: Civil Court, County of Queens
89-17 Sutphin Blvd.
Jamaica, NY 11435